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Watergate: A Dike That Can Leak

By Archibald Cox

WASHINGTON — Watergate was a shocking reminder of the ever-present need for vigilance against the corrupting influence of power. The aftermath, because of American idealism and the strengths of constitutional government, brought a reaction and important reforms that can be maintained and expanded only by the constant vigilance of informed and active citizens.

What are the lessons of Watergate?

1. The principle was established that even the President is subject to the Constitution and laws as interpreted by an independent judiciary.

In a television interview after his resignation, Richard M. Nixon asserted: "If the President does it, it can't be against the law." Few persons would make the claim so baldly, but the view was widely held that a President was not subject to lawsuits or court orders. The decisions upholding the subpoenas for the Watergate tapes rejected that claim of immunity and thus provided a new constitutional safeguard against executive oppression. The "fire storm" of public opinion that forced Mr. Nixon to comply with the court order gave reality to the legal principle.

2. The Watergate investigations and prosecutions showed that under our system of government, we can and will investigate, fairly, charges of public wrongdoing, and hold guilty officials accountable, even at the highest levels.

The First Amendment guarantee of press freedom made possible the reporting that focused attention on the indications of a high-level effort to cover up responsibility for the Watergate break-in. The constitutional separation of powers enabled the Senate to force appointment of an independent special prosecutor and to conduct its own investigation. The grand jury investigations and subsequent prosecutions appear, for the most part, to have achieved substantial justice.

3. Watergate led to the establishment of explicit ethical standards and machinery for enforcing them. If zealously maintained, they will furnish substantial protection against renewed abuse.

The 1978 Ethics in Government Act required, for the first time, comprehensive public financial disclosure by officials in all three branches of government, thus providing protection against conflict of interest. The Codes of Official Conduct, adopted in 1977, set forth explicit rules for Congress, including eliminating office "slush funds" and placing a \$100 limit on lobbyists' gifts. Adoption of the Special Prosecutor Act established enforcement machinery for dealing with abuses by executive branch officials.

Today, cynical revisionists are branding the reforms "over-reaction," apparently to weaken or repeal the safeguards. The Reagan Administration has done nothing to stress the importance of maintaining the highest standards of honor and integrity among Government officials. Attorney General William French Smith last year called for repeal of the Special Prosecutor Act. White House counsel Fred Fielding recently called for substantially weakening the Ethics in Government Act.

Doubtless these measures can be improved in detail, but there should be no backtracking on the fundamentals.

4. The investigations associated with Watergate spotlighted the abuses of vast, uncontrolled contributions to political campaigns.

The post-Watergate law substituting public funding for private contributions for major Presidential candidates shows that we know how to remedy the evil. There is a desperate need to apply the same remedy to Congressional campaigns, where the pre-Watergate evil — big money contributed for big favors — flourishes in the form of corporate, labor union and trade association P.A.C.'s — political action committees. P.A.C.'s contributed \$55 million to Senate and House candidates in 1980. They are expected to give more than \$80 million to 1982 Congressional candidates and more than \$100 million in 1983-84. Public financing of Senate and House races would be the best remedy, but at a minimum tighter restrictions should be placed upon P.A.C. contributions.

5. Watergate showed how secrecy in government blinds the narrow inside circle to considerations of decency and honor.

The White House coterie would never have promoted the Watergate break-in, the burglary of a psychiatrist's office to steal files on Dr. Daniel Ellsberg, the bugging of newspaper reporters, Federal Bureau of Investigation "black bag" jobs and the planned use of the Internal Revenue Service against political "enemies" without the belief that such violations of liberty could be kept secret.

For a time, Washington seemed aware of the dangerous fruits of secrecy. The Freedom of Information Act was strengthened. Restrictions were placed upon the secret domestic activities of the Central Intelligence Agency and F.B.I. Unfortunately, there is reason to believe that the lesson is being forgotten in Administration circles. There is talk of weakening the Freedom of Information Act. Restraints upon the covert domestic activities of the F.B.I. and C.I.A. have been relaxed.

Watergate, and revisionists' effort to weaken or repeal the reforms, teach the need for constant public vigilance against not only the corrupting influence of power but also the cynicism of those who scorn the basic idealism of the American people.

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